

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1377-JLH

JURY TRIAL DEMANDED

MASIMO CORPORATION,

Counter-Claimant,

v.

APPLE INC.,

Counter-Defendant.

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1378-JLH

JURY TRIAL DEMANDED

MASIMO CORPORATION and
CERCACOR LABORATORIES, INC.,

Counter-Claimants,

v.

APPLE INC.,

Counter-Defendant.

**PLAINTIFF AND COUNTERCLAIM-DEFENDANT APPLE INC.'S
MOTION FOR ADDITIONAL PAGES FOR THE PARTIES' SUMMARY JUDGMENT
AND DAUBERT BRIEFS**

Plaintiff and counter-defendant Apple Inc. (“Apple”) respectfully moves for additional pages for the parties’ summary judgment and *Daubert* briefs as follows:

- 10 cumulative additional pages for opening briefs;
- 10 cumulative additional pages for opposition briefs; and
- 5 cumulative additional pages for reply briefs.

Paragraph 16(c) of the scheduling order entered on May 25, 2023, provides that each party is permitted “50 pages for all opening briefs, 50 pages for all answering briefs, and 25 pages all reply briefs” for “all case dispositive and *Daubert* motions.” C.A. No. 22-1377, D.I. 103; C.A. No. 22-1378, D.I. 92.

On January 16, 2024, the Court held a hearing during which counsel for Apple raised the possibility of requesting additional pages for the parties’ summary judgment and *Daubert* briefs. Ex. 1 at 29-30 ((January 16, 2024 Hearing Transcript) (“Mr. Magic: We were thinking maybe 10 total for the opening, 10 for the opposition, and 5 for reply. The Court: That’s fine.”)). Apple believes good cause exists for the additional pages given the complexity of the case, which involves antitrust claims brought under the Sherman Act, false advertising claims brought under the Lanham Act and ancillary state laws, and 15 asserted patents (not including the 5 patents that are currently stayed). *See* C.A. No. 22-1378, D.I. 465; C.A. No. 22-1377, D.I. 436 (Joint Interim Status Report). The parties have exchanged roughly 70 reports from over 25 experts. *Id.*

Following the hearing, Apple reached out to Masimo regarding its willingness to stipulate to the request for additional pages as previewed to the Court. *See* Ex. 2 at 3 (Magic Email, dated Jan. 19, 2024). Apple reiterated its proposal the following week. *See* Ex. 2 at 2 (Eagles Email, dated Jan. 22, 2024). At 10:13pm ET on January 22nd, Masimo informed Apple that it opposed

Apple's proposal. *See* Ex. 2 at 2 (Loebakka Email, dated Jan. 22, 2024).¹ Apple responded to Masimo's message the next morning. *See* Ex. 2 at 1 (Eagles Email, dated Jan. 23, 2024). Specifically, Apple restated its position that "the Court and parties [would] be better served by a cumulative page extension of 10/10/5" and notified Masimo that it would move for such an extension. *See* Ex. 2 at 2 (Loebakka Email, dated Jan. 22, 2024).

Given the February 5, 2024, deadline for summary judgment and Daubert motions, Apple requests that the Court require Masimo file any response to this motion on or before Friday, January 26, 2024.

Respectfully submitted,
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¹ In the same message, Masimo also offered a more limited proposal on its own for an extension of 4 pages on the principal set of briefs and 2 for replies. *See* Ex. 2 at 1 (Loebakka Email, dated Jan. 22, 2024). Later on January 23rd, Masimo inquired as to Apple's position regarding the "use [of] a word count" in lieu of page-limits. Ex. 2 at 1 (Loebakka Email, dated Jan. 23, 2024). Apple would not object to a brief that is over the page limit but under the applicable alternative word limit, as set forth in the "Page Limits" section of Judge Noreika's Preferences and Procedures For Civil Cases.

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